

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH BENEFITS FUND; PIRELLI ARMSTRONG RETIREE MEDICAL BENEFITS TRUST; TEAMSTERS HEALTH & WELFARE FUND OF PHILADELPHIA AND VICINITY; PHILADELPHIA FEDERATION OF TEACHERS HEALTH AND WELFARE FUND; DISTRICT COUNCIL 37, AFSCME - HEALTH & SECURITY PLAN; JUNE SWAN; BERNARD GORTER; SHELLY CAMPBELL and CONSTANCE JORDAN,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri corporation, and McKESSON CORPORATION, a Delaware corporation,

Defendants.

Civil Action: 1:05-CV-11148-PBS

Judge Patti B. Saris

---

**DEFENDANT MCKESSON CORPORATION'S FURTHER RESPONSE TO PLAINTIFFS' MOTION FOR LEAVE TO FILE A REPLY**

At the November 13 hearing, the Court requested *simultaneous* submissions regarding matters raised by plaintiffs' request that the Court reconsider its August 27, 2007 Class Order. It is obvious that plaintiffs presented new matter in their November 28 filing, and thus should go without saying. The new matter presented by plaintiffs includes:

- a new 50-page declaration from Dr. Hartman and new declarations from two other declarants;
- new positions on the relationship between what TPPs pay PBMs and what PBMs pay retailers;
- new legal authority (which is miscited) on class certification and notice issues; and

- a trial “game plan” that plaintiffs did not discuss with McKesson in advance and that falsely claims McKesson has proposed 20 trial days for its case alone.

Had plaintiffs asked beforehand whether McKesson would consent to additional briefing on class issues, McKesson would have agreed to another round of simultaneous submissions. Plaintiffs instead chose to file a reply brief without first meeting and conferring, and now ask the Court to deny McKesson a response to their November 28 filing. There is no justification for the special treatment plaintiffs seek. If the Court accepts additional briefing from plaintiffs regarding McKesson’s November 28 filing, McKesson should be given the same opportunity.

Respectfully submitted,

McKesson Corporation  
By its attorneys:

/s/ Lori A. Schechter

Melvin R. Goldman (*pro hac vice*)  
Lori A. Schechter (*pro hac vice*)  
Paul Flum (*pro hac vice*)  
Tiffany Cheung (*pro hac vice*)  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105-2482  
Telephone: (415) 268-7000  
Facsimile: (415) 268-7522

John Kiernan  
Nicole Johnson  
Bonner Kiernan Trebach & Crociata  
200 Portland Street  
Suite 400  
Boston, MA 02114  
Telephone: (617) 426-3900  
Facsimile: (617) 426-0380

Dated: December 6, 2007

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court’s electronic filing service on December 6, 2007.

/s/ Lori A. Schechter  
Lori A. Schechter